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BURBANK POLICE DEPARTMENT,  
BURBANK POLICE OFFICERS ADAM  
BAUMGARTEN AND MICHAEL EDWARDS

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

PRESTON SMITH, an individual;	)	Case No.
	)	
Plaintiff,	)	<b>ANSWER TO COMPLAINT;</b>
	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
v.	)	
	)	
CITY OF BURBANK, BURBANK	)	
POLICE DEPARTMENT, BURBANK	)	
POLICE DEPARTMENT OFFICER	)	
GUNN; BURBANK POLICE	)	
DEPARTMENT OFFICER	)	
BAUMGARTEN; BURBANK	)	
POLICE DEPARTMENT OFFICER	)	
EDWARDS; AND DOES 1	)	
THROUGH 100, INCLUSIVE	)	
	)	
Defendant.	)	
	)	
	)	

1 Defendant City of Burbank, Burbank Police Department, and Burbank  
2 Police Officers Adam Baumgarten and Michael Edwards, respond to plaintiff's  
3 Complaint as follows:

4 1. In response to Paragraph 7, defendants admit that Officer Gunn is a  
5 police officer with the Burbank Police Department, and that with respect to the  
6 arrest of plaintiff, was acting within the course and scope of his employment, and  
7 under color of law. Except as herein admitted, defendants lack sufficient  
8 information to admit the remaining allegations, and/or deny the allegations, and  
9 therefore, the defendants deny the remaining allegations therein.

10 2. In response to Paragraph 8, Defendants admit that Officer Gunn was  
11 acting within the course and scope of his employment with the Burbank Police  
12 Department. Except as herein admitted, defendants deny.

13 3. In response to Paragraph 9, defendants admit that Officer Baumgarten  
14 is a police officer with the Burbank Police Department, and that with respect to the  
15 arrest of plaintiff, was acting within the course and scope of his employment, and  
16 under color of law. Except as herein admitted, defendants lack sufficient  
17 information to admit the remaining allegations, and/or deny the allegations, and  
18 therefore, the defendants deny the remaining allegations therein.

19 4. In response to Paragraph 10, Defendants admit that Officer  
20 Baumgarten was acting within the course and scope of his employment with the  
21 Burbank Police Department. Except as herein admitted, defendants deny.

22 5. In response to Paragraph 11, defendants admit that Officer  
23 Baumgarten is a police officer with the Burbank Police Department, and that with  
24 respect to the arrest of plaintiff, was acting within the course and scope of his  
25 employment, and under color of law. Except as herein admitted, defendants lack  
26 sufficient information to admit the remaining allegations, and/or deny the  
27 allegations, and therefore, the defendants deny the remaining allegations therein.

1           6.     In response to Paragraph 12, Defendants admit that Officer  
2 Baumgarten was acting within the course and scope of his employment with the  
3 Burbank Police Department. Except as herein admitted, defendants deny.

4           7.     In response to Paragraph 13, defendants admit that plaintiff filed a  
5 claim which was denied. Except as herein admitted, defendants deny.

6           8.     In response to Paragraph 14, defendants deny that venue was proper in  
7 the Los Angeles Superior Court, Central District, but admit that venue is proper in  
8 the Central District of the United States District Court.

9           9.     In response to Paragraph 16, Defendants admit that on April 10, 2009,  
10 plaintiff was walking with another person when he was approached by Officer  
11 Gunn in the vicinity of a liquor store. Except as herein expressly admitted,  
12 defendants lack sufficient information and belief to enable them to respond.

13          10.    In response to Paragraph 17, defendants admit that Officer Gunn used  
14 a taser on plaintiff. Except as herein expressly admitted, defendants deny.

15          11.    In response to Paragraph 19, defendants admit that after plaintiff's  
16 arrest, he was transported to St. Joseph's Hospital and approved for booking.  
17 Except as herein expressly admitted, defendants deny.

18          12.    In response to Paragraphs 4, 5, 6, 21, 22, 43, 50, Defendants admit.

19          13.    In response to Paragraphs 1, 2, Defendants lack sufficient information  
20 and belief to respond to this allegation, and on that basis, deny.

21          14.    In response to Paragraphs 3, 18, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32,  
22 33, 34, 35, 36, 38, 29, 40, 41, 44, 45, 46, 47, 48, 50, 51, 52, 53, Defendants deny.

23          15.    In response to Paragraphs 15, 20, 37, 42, 49, Defendants incorporate  
24 by reference their response to the incorporated paragraphs.

25                   **FIRST AFFIRMATIVE DEFENSE**

26          16.    Plaintiffs have failed to state facts sufficient to constitute a cause of  
27 action against Defendant CITY OF BURBANK herein in accordance with *Monell*  
28 *v. Department of Social Services*, 98 S. Ct. 2018 (1978).

1  
2 SECOND AFFIRMATIVE DEFENSE

3 17. Plaintiffs have failed to allege facts sufficient to state a claim upon  
4 which relief can be granted under 42 USC§ 1983.

5 THIRD AFFIRMATIVE DEFENSE

6 18. Notwithstanding that these answering defendants deny that plaintiffs  
7 were subjected to any deprivation of their constitutional rights as alleged in the  
8 complaint herein, it is affirmatively alleged that the actionable facts giving rise to  
9 any such allegedly improper action do not rise to the level of a constitutional  
10 deprivation.

11 FOURTH AFFIRMATIVE DEFENSE

12 19. Defendant is not liable for the causes of action alleged under state law  
13 herein on the basis of plaintiff's failure to properly and adequately comply with the  
14 claim filing requirements of the California Government Tort Claims Act.

15 FIFTH AFFIRMATIVE DEFENSE

16 20. The individual defendants have qualified immunity.

17 SIXTH AFFIRMATIVE DEFENSE

18 21. Defendants are immune from liability under the California Tort  
19 Claims Act, including but not limited to Sections 821.6, 820.2, and 820.8.

20 Wherefore, defendants pray for relief as follows:

- 21 1. That plaintiff take nothing by his Complaint herein;  
22 2. That defendants be awarded the costs of suit including attorneys fees  
23 pursuant to 42 USC §1988; and  
24 3. For such other and further relief as the court deems just and proper.  
25  
26  
27  
28

1 DATED: November 16, 2010

2 Respectfully submitted,

3 DENNIS A. BARLOW

4 City Attorney

5 By: 

6 Carol Ann Humiston

7 Senior Assistant City Attorney

**DEMAND FOR JURY TRIAL**

Defendants hereby demand trial by jury.

DATED: November 16, 2010

Respectfully submitted,

DENNIS A. BARLOW  
City Attorney

By: 

Carol Ann Humiston  
Senior Assistant City Attorney

**PROOF OF SERVICE**

F.R.C.P. 5 / C.C.P. 1013a(3)/ Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On November 17, 2010, I served the following listed document(s), **Answer to Complaint; Demand for Jury Trial** by method indicated below, on the party in this action:

Manuel H. Miller  
Max. A. Sauler  
Law Offices of Manuel H. Miller, APC  
20750 Ventura Blvd., Suite 440  
Woodland Hills, CA 91364

Dennis M. Gonzales  
Lawrence Beach Allen & Choi, PC  
100 West Broadway, Suite 1200  
Glendale, California 91210-1219

☒ **BY U.S. MAIL**

By placing ☐ the original / **XX** a true copy thereof enclosed in a sealed envelope(s), with postage prepaid, addressed as per the attached service list, for collection and mailings at the City of Burbank in Burbank, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of the document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

☐ **BY ELECTRONIC SERVICE  
(via electronic filing service provider)**

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at [www.fileandserve.lexisnexis.com](http://www.fileandserve.lexisnexis.com) pursuant to the Court's \_\_\_\_\_ Order mandating electronic service. See Cal.R.Ct.R. 2053, 2055, 2060. The transmission was reported as complete and without error.

☐ **BY OVERNIGHT DELIVERY**

By delivering the document(s) listed above in a sealed envelope designated by the express service carrier, with delivery fees paid or provided for, addressed as per the above service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents.

☐ **BY ELECTRONIC SERVICE  
(to individual person)**

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

☐ **BY PERSONAL SERVICE**

☐ By personally delivering the document(s) listed above to the offices at the addressee(s) as shown on the attached service list.

☐ By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

☐ **BY FACSIMILE**

By transmitting the document(s) listed above from City of Burbank-City Attorney's Office in Burbank, California to the facsimile machine telephone number(s) set forth on the attached service list. Service by facsimile transmission was made pursuant to agreement of the parties, confirmed in writing.

☐ **STATE**

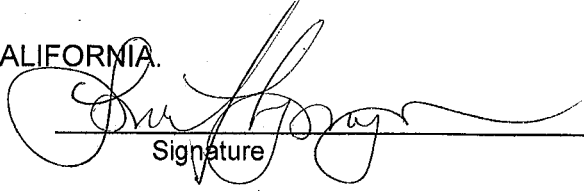
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **FEDERAL**

I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed November 17, 2010, at BURBANK, CALIFORNIA.

Lusine Arutyunyan  
Type or Print Name

  
Signature